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1943  
CHARLES ELMOR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. **846** 48

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.,  
*Appellants,*  
vs.

THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, SEATRAN LINES,  
INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY.

**STATEMENT AS TO JURISDICTION.**

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## INDEX.

### SUBJECT INDEX.<sup>o</sup>

	Page
Statement as to jurisdiction .....	1
Statutory provisions .....	1
The statute of a state, or the statutes or treaty of the United States, the validity of which is in- volved .....	2
Date of the judgment or decree sought to be re- viewed and the date upon which the application for appeal was presented .....	3
Nature of case and of rulings below .....	3
Cases sustaining the Supreme Court's jurisdiction on appeal .....	11
Opinion and decree of the District Court .....	12

### TABLE OF CASES CITED.

<i>Agwilines, Inc., et al. v. Akron, Canton &amp; Youngstown Railway Co., et al.</i> , 248 I. C. C. 255 .....	11
<i>Ann Arbor Railroad Co. v. United States</i> , 281 U. S. 658.	11
<i>Beaumont, Sour Lake &amp; Western Railway Co. v. United States</i> , 282 U. S. 74 .....	11
<i>Federal Trade Commission v. Goodyear Tire &amp; Rubber Co.</i> , 304 U. S. 257, 92 Fed. (2) 677 .....	11
<i>Florida v. United States</i> , 282 U. S. 194 .....	11
<i>Hoboken Manufacturers Railroad Co. v. Abilene &amp; South- ern Ry. Co., et al.</i> , 248 I. C. C. 109 .....	3, 6
<i>Interstate Commerce Commission v. Hoboken Manu- facturers Railroad Co.</i> , No. 43, October Term, 1943, decided December 6, 1943 .....	11
<i>Interstate Commerce Commission v. Louisville &amp; Nashville R. R. Co.</i> , 227 U. S. 88 .....	11
<i>Interstate Commerce Commission v. Union Pacific Ry. Co.</i> , 222 U. S. 541 .....	11
<i>Investigation of Seatrail Lines, Inc.</i> , 195 I. C. C. 215, 206 I. C. C. 328, 248 I. C. C. 109 .....	5
<i>Investigation and Suspension Docket No. 4815 Wrought Pipe to the Southwest</i> , 251 I. C. C. 405 .....	11

	Page
<i>National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.</i> , 303 U. S. 261.....	11
<i>Southern Pacific Terminal Co. v. I. C. C.</i> , 219 U. S. 498.	
<i>Southern Steamship Company Common Carrier Application</i> , Docket No. W-819, decided December 17, 1941.	
<i>United States v. Baltimore &amp; Ohio Railroad Co.</i> , 293 U. S. 454.....	11
<i>United States v. Chicago, Milwaukee, St. Paul &amp; Pacific R. R. Co.</i> , 294 U. S. 499.....	11

## STATUTES CITED.

Interstate Commerce Act, Section 1(4), (10) and (11).	2
U. S. Code, Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539), as amended.....	2
U. S. Code, Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220), as amended.....	2
U. S. Code, Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).....	2
U. S. Code, Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150), as amended.....	2
U. S. Code, Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827), as amended.....	2

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY

Civil No. 2092.

THE PENNSYLVANIA RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, THE BOSTON AND MAINE RAILROAD, MERREL P. CALLAWAY, TRUSTEE OF CENTRAL OF GEORGIA RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, THE LONG ISLAND RAILROAD COMPANY, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, MAINE CENTRAL RAILROAD COMPANY, NORFOLK AND WESTERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, LEIGH R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, TEXAS AND NEW ORLEANS RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY,

*Petitioners,*

—against—

UNITED STATES OF AMERICA,

—and—

*Defendant,*

THE INTERSTATE COMMERCE COMMISSION, FORREST S. SMITH, TRUSTEE OF HOBOKEN MANUFACTURERS RAILROAD COMPANY, SEATRAN LINES, INC., NEW ORLEANS AND LOWER COAST RAILROAD COMPANY,

*Interveners-Defendants.*

**JURISDICTIONAL STATEMENT BY PETITIONERS  
UNDER RULE 12 OF THE REVISED RULES OF  
THE SUPREME COURT OF THE UNITED STATES.**

The petitioners-appellants respectfully present the following statement disclosing the basis upon which it is con-

tended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

### **A. Statutory Provisions.**

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1914, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 836; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

### **B. The Statute of a State, or the Statutes or Treaty of the United States, the Validity of Which Is Involved.**

The validity of a statute of a State, or of a statute or treaty of the United States, is not involved by this appeal by railroads' petitioners.

**C. Date of the Judgment or Decree Sought to Be Reviewed and the Date Upon Which the Application for Appeal Was Presented.**

The decree sought to be reviewed was entered on December 8, 1943. The petition for appeal was presented and allowed on January 31, 1944, together with the assignment of errors.

**D. Nature of Case and of Rulings Below.**

This is an appeal from a final decree of the United States District Court for the District of New Jersey, entered December 8, 1943, setting aside in part an order of the Interstate Commerce Commission dated October 13, 1941, in *Hoboken Manufacturers Railroad Company v. Abilene & Southern Ry. Co., et al.*, 248 I. C. C. 109, wherein the Commission ordered the defendants, including the railroads petitioners herein, according as they participate in through routes with the complainants therein and Seatrain Lines, Inc., via Belle Chasse, La., and Hoboken, N. J., to cease and desist and to abstain from observing and enforcing rules, regulations and practices which prohibit the interchange of petitioners' freight cars for transportation by Seatrain Lines, Inc., a carrier by water, and wherein the Commission ordered defendants therein, including railroads petitioners herein, to establish, observe and enforce rules, regulations and practices with respect to the interchange of their freight cars for transportation by Seatrain Lines, Inc., and wherein the Commission determined the compensation for the use of said freight cars.

The case presents the novel questions:

1. Whether railroad carriers are under any legal duty to deliver their freight cars for transportation by a water carrier.

2. Whether the railroads are under any legal duty to deliver their freight cars for transportation by a water carrier beyond the United States and its territorial waters or into and through foreign waters or where the water carrier docks at a foreign port.

3. Whether the Commission has authority to direct the railroads to deliver their freight cars for such purposes.

4. Whether the compensation fixed by the Commission for use of the railroads' freight cars by Seatrain, a water carrier, is arbitrary, unreasonable, confiscatory and based upon mistake of law.

The District Court concluded that the Commission acted within its statutory power in requiring the railroads to permit the use of their freight cars for such purposes by a water carrier in so far as the transportation of the freight cars by the water carrier was within the United States or its territorial waters and that the Commission did not base its decision upon a mistake of law in that respect. The District Court held that the orders of the Commission were beyond the statutory power of the Commission in so far as they required the railroads to permit the interchange of their cars with and for the use of and to be transported by a water carrier beyond the United States and its territorial waters or to a foreign port; that neither the Interstate Commerce Act nor any other statute authorized the Commission to require railroad carriers to permit such use of their cars and that to that extent and in that respect the orders of the Commission were based upon a mistake of law. Finally, the Court held that the compensation fixed by the Commission for the said use of the petitioners' freight cars, was not confiscatory or illegal.

The District Court entered a decree dated December 8, 1943, that the Commission's said order, in so far as it

directs the railroads petitioners to permit the interchange of their freight cars with or for the use of the defendant Seatrain, a carrier by water, for transportation beyond the United States and its territorial waters, or into extra-territorial waters, or to a foreign port, was erroneous and beyond the lawful authority of the Commission and was void, and to that extent the Commission's orders were set aside, annulled and enforcement thereof enjoined.

The railroads petitioners appeal from the said decree of the court below in so far as it fails to set aside the said Commission's order in its entirety.

Seatrain Lines, Inc. is a common carrier by water subject to the Commission's jurisdiction. *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215. Seatrain operates ocean-going vessels having four decks, each deck in turn having four sets of standard gauge railroad tracks. By means of a special loading device, consisting of a crane and cradle, provided at three ports (Hoboken, New Jersey, Belle Chasse, Louisiana, and Havana, Cuba), loaded freight cars with their contents are put on board Seatrain ships without breaking bulk and are thus transported in commerce. Seatrain's transportation takes the cars and their contents into the port of Havana, Cuba, en route to or from Hoboken or Belle Chasse. The loading facilities for Seatrain ships are located at Belle Chasse on the property of New Orleans and Lower Coast Railroad, herein termed Lower Coast, a terminal-switching railroad, connecting in turn with the petitioners Texas and New Orleans Railroad, Louisville and Nashville Railroad and Southern Railway. The loading facilities at Hoboken are located on the property of Hoboken Manufacturers Railroad, herein termed Hoboken Railroad. Hoboken Railroad is a short, single-track terminal-switching line which runs along the water front of Hoboken and connects with the Erie Railroad and

via the Erie with other trunk lines reaching New York harbor.

The American Railway Association (to which trunk line railroads including the petitioners belong) promulgated a car service rule (Rule 4) providing "Cars of railway ownership must not be delivered to a steamship, ferry or barge line for water transportation without permission of the owner filed with the Car Service Division."

Hoboken Railroad and the Lower Coast filed complaints with the Commission attacking the refusal of the railroads to allow their freight cars to be used by Seatrain. Seatrain intervened. The Commission held in its report in Investigation of Seatrain Lines, Incorporated, at No. 25,566 (206 I. C. C. 328) that Seatrain was a common carrier by water and where through routes existed between rail carriers and water carriers the Commission had jurisdiction to require rail carriers who were parties to such through routes to interchange cars with water carriers. Subsequently, the Pennsylvania Railroad and certain of the other petitioners, at the direction of the Commission, established through routes, and those through routes are now in full force and effect.

The Commission reopened for further hearing the proceedings at Nos. 25,728 and 25,878, *Hoboken Manufacturers Railroad Company v. Abilene & Southern Railway Company*, and *New Orleans & Lower Coast Railroad Company v. The Akron, Canton & Youngstown Railroad Company*, to determine on what terms and conditions, including compensation, the petitioners should be required to interchange their freight cars with Seatrain. On October 13, 1941, after completing its hearings, the Commission announced its final decision (248 I. C. C. 109) and entered the cease-and-desist order of October 13, 1941. The Commission held it had jurisdiction to require rail carriers, parties to through routes with Seatrain, to permit the use of

their freight cars in Seatrain's service although Seatrain has no cars of its own. The Commission found that the rail carriers' refusal to permit interchange of cars between themselves and Seatrain was a violation of the Interstate Commerce Act and that the rate of \$1.00 per day should be payable by Seatrain, though only for such periods as the rail-carriers' cars were in its actual possession and not from the time of tender as was required of railroad carriers. On October 13, 1941, the order complained of was entered by the Commission.

The petitioners contend that the order of October 13, 1941, should be set aside or at least mitigated for three reasons: First, that there is no duty on rail carriers to deliver their freight cars for the use of, or to interchange their cars with, a water carrier and that the Commission has no authority to direct such delivery or interchange; Second, that the Commission is without power to require rail carriers to permit their cars to be taken and used on ocean-going vessels of a water carrier for transportation beyond the United States and its territorial waters or into a foreign port or into or through foreign waters. Petitioners assert that the Commission's order, in fixing the compensation for the use of petitioners' freight cars at the rate of \$1 per car per day and for only the period of time after Seatrain's acceptance and while they were in its possession and relieving Seatrain from any obligation to pay for the use of the freight cars while they were held at port for its use and benefit, and in not requiring Seatrain to assume the obligation of returning the cars, was in that and other respects arbitrary, unreasonable, confiscatory and based upon a mistake of law.

The petitioners on April 15, 1943, filed in the three-judge District Court their amended petition to enjoin, set aside, annul, and suspend the Commission's said order.

On October 9, 1943, the District Court rendered its decision that it was unnecessary to determine the question of

confiscation and otherwise sustaining the petitioners-appellants except in its Conclusions of Law 2 and 3, which provide:

"2. The Commission acted within its statutory power in requiring the railroads to permit the use of their cars by Seatrain in so far as such transportation is within the United States or its territorial waters.

"3. The Commission did not base its decision upon a mistake of law in holding that the rail carriers were under duty to permit their cars to be used by Seatrain where through routes existed or were prescribed by the Commission in so far as such through routes are within the United States or its territorial waters. In requiring the rail carriers to permit the use of their cars by Seatrain, a carrier by water, the Commission did not exceed the authority conferred upon it by statute.

Thereafter on December 8, 1943, the District Court rendered an opinion on the argument in respect to the form of decree and made the following Additional Conclusions of Law:

"1. The findings of the Commission in respect to the compensation to be paid by Seatrain to the petitioners for the use of the petitioner's cars find adequate support in the evidence, as do the Commission's conclusions in the law.

"2. The rate of compensation ordered by the Commission to be paid by Seatrain to the petitioners for the use of petitioner's freight cars interchanged with Seatrain, including the current rate of \$1 per day payable by Seatrain for such period as the cars are in its actual possession, is not confiscatory but is reasonable.

The Court's decree was entered on the said December 8, 1943.

The questions presented by this appeal are substantial.

Whether railroad carriers are under any duty to deliver their freight cars for transportation by carriers by water, has not heretofore been decided by this Court.

Whether the Interstate Commerce Commission has any statutory authority to compel railroad carriers to deliver their freight cars for transportation by carriers by water has not been decided by this Court.

The foregoing questions involve the construction of Section 1 (4), (10) and (11) and other provisions of the Interstate Commerce Act. They also involve the character of the duties of the railroads of the country as public carriers and the statutory authority of the Commission.

With respect to compensation, the result of the Commission's order is that Seatrain, a carrier by water, is permitted to take the freight cars of petitioners against their consent, for its own use and profit, and to pay therefor \$1 per day but only for the time that the car is in Seatrain's actual possession. \$1 per day is the rate paid by railroad carriers interchanging cars among themselves but the railroad carriers pay such per diem rate from the time that the car is tendered until it is accepted and thereafter while it is in their actual possession. Further, the railroads are under an obligation to return the car empty if no load therefor is available.

The Commission adopted the \$1. per day rate for Seatrain because that was the per diem rate used by the railroads, but relieved Seatrain of the duty of paying it from the date of tender to the date of its acceptance of the car, and further, did not require Seatrain to return the car whether empty or loaded. For example, Seatrain is permitted by the order to take the loaded car at Hoboken, N. J. at the rate of \$1. per day for its use while producing revenue for Seatrain, and then is permitted to abandon

the car at or beyond Belle Chasse, La., to be returned empty at the railroads' expense. The said order confers all the benefits of car ownership upon Seatrain without imposing upon it any of the burdens thereof.

In their jurisdictional statement, the appellant-defendants suggest that the case may be moot. With respect to a similar suggestion made upon the trial, the court, in its opinion, says:

"The parties have suggested to the court that this case may be moot because of circumstances brought on by war. This point was raised, we believe, merely for the purpose of fully informing the court as to present conditions governing Seatrain's service. Without going into details as to the nature of this service, it is sufficient to state that the order of the Commission is presently in effect and that that order requires the petitioners not only to abstain from enforcing present rules, regulations and practices which prohibit the interchange of their freight cars for transportation by Seatrain in interstate commerce, but also requires the petitioners to establish on or before a specified date, and thereafter to observe, rules and regulations with respect to the interchange of their freight cars for transportation by Seatrain in interstate commerce. We conclude that there is a justiciable controversy before this court within the purview of the Urgent Deficiencies Act, 38 Stat. 219, 28 U. S. C. A. Sec. 41 (28) and Secs. 43 to 48, inclusive. The Commission's order is a continuing one and embraces not only a negative duty upon the petitioners but requires affirmative conduct upon their part as well. Though the circumstances of Seatrain's service have been changed by the war, the case is not moot and the petitioners are entitled to a review of the order complained of. See *Federal Trade Commission v. Goodyear*, 304 U. S. 257, and the cases cited therein."

See also *Interstate Commerce Commission v. Hoboken Manufacturers Railroad Co.*, No. 43, October Term, 1943.

decided December 6, 1943; *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U. S. 498, 514, (1910); *Federal Trade Commission v. Goodyear Tire & Rubber Company*, 304 U. S. 257, 259 (1938), reversing 92 Fed. (2) 677; and *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271 (1938).

Furthermore, the Commission has continued to issue orders affecting service under like temporary suspension.

*Investigation and Suspension Docket No. 4815 Wrought Pipe to the Southwest*, decided April 13, 1942; 251 I. C. C. 405.

*Aguilines, Inc. et al v. Akron Canton & Youngstown Railway Co., et al.*, No. 27969, decided December 8, 1941, 248 I. C. C. 255.

*Southern Steamship Company Common Carrier Application*, Docket No. W-819, decided December 17, 1941.

#### **E. Cases Sustaining the Supreme Court's Jurisdiction of the Appeal.**

*Interstate Commerce Commission v. Louisville & Nashville R. R. Co.* 227 U. S. 88.

*Interstate Commerce Commission v. Hoboken Manufacturers' Railroad Co.* No. 43, October Term, 1943, decided December 6, 1943, — U. S. —.

*United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499.

*United States v. Baltimore & Ohio Railroad Co.* 293 U. S. 454.

*Florida v. United States*, 282 U. S. 194.

*Beaumont, Sour Lake & Western Railway Co. v. United States*, 282 U. S. 74.

*Ann Arbor Railroad Co. v. United States*, 281 U. S. 658.

*Interstate Commerce Commission v. Union Pacific Ry. Co.* 222 U. S. 541.

## F. Opinion and Decree of the District Court.

Appended to this statement are (1) copies of the opinion, findings of fact and conclusions of law of the District Court dated October 9, 1943, and (2) copies of the supplemental opinion and final decree of said court sought to be reviewed, dated December 8, 1943. \*

We therefore respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated, January 31, 1944.

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\*(Clerk's Note. \*These documents are printed as appendices to the Jurisdictional Statement in the case of *U. S., et al. v. Pennsylvania Railroad Company, et al.*, No. 845, October Term, 1943, and are not reprinted here.)

